



### Summary of Contents

6.1	Felony Traffic Offenses Defined .....	1
6.2	Courts' Jurisdiction Over Felony Traffic Offenses .....	2
6.3	Criminal Penalties for Felony Traffic Offenses .....	2
6.4	Licensing Sanctions for Felony Traffic Offenses .....	3

This chapter addresses adult procedures and sanctions for felony traffic offenses and two year misdemeanors involving private automobiles. Excluded from its discussion are procedures and sanctions for drunk driving and DWLS offenses under Vehicle Code §625 and §904; these subjects are addressed in Part I of this volume. Also excluded are offenses involving snowmobiles, watercraft, and ORVs; these vehicles are addressed in Volume 1 of the *Traffic Benchbook*. For information about traffic offenses involving minors, see Miller, *Juvenile Traffic Benchbook* (MJI, 1999), which is published as a companion volume to the *Traffic Benchbook*.

### 6.1 Felony Traffic Offenses Defined

The principal source of Michigan traffic law is the Michigan Vehicle Code. The Vehicle Code clearly distinguishes the felony traffic offense from the misdemeanor and civil infraction:

“It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of this state declared to be a felony or a civil infraction.”  
MCL 257.901(1); MSA 9.2601(1).

In other words, all felony traffic offenses are declared by statute to be so.

Other felony traffic offenses appear in the Michigan Penal Code. The Penal Code construes “felony” to mean an offense punishable by death or by imprisonment in the state prison. MCL 750.7; MSA 28.197.

The Code of Criminal Procedure defines “felony” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony.” MCL 761.1(g); MSA 28.843(g).

According to the foregoing definitions, those crimes designated as felonies are more serious in nature than those designated as misdemeanors. Both felonies and misdemeanors should be distinguished from civil infractions, which are not crimes. Because it is not a crime, a civil infraction cannot be a lesser-included offense of a felony or misdemeanor.\* MCL 257.907(1); MSA 9.2607(1).

\*See Volume 1 of the *Traffic Benchbook* on civil infractions.

\*See Miller, *Juvenile Traffic Benchbook* (MJJ, 1999) for a detailed discussion of the required procedures for juveniles.

## 6.2 Courts' Jurisdiction Over Felony Traffic Offenses

The Michigan courts have jurisdiction over criminal traffic cases as follows:

- The district court has jurisdiction to try misdemeanor offenses punishable by fine or imprisonment not exceeding one year, or both, as well as ordinance and charter violations punishable by a fine or imprisonment, or both. The district court also has jurisdiction to conduct felony arraignments and preliminary examinations, MCL 600.8311(a)–(d); MSA 27A.8311(a)–(d), and MCR 6.104 and 6.110. See Section 2.6(A) on the authority of the district court magistrate to act in cases under the Vehicle Code.
- The circuit court has jurisdiction to try felony offenses, Const 1963, art 6, §13. See also *People v Curtis*, 42 Mich App 652, 655 (1972). The Family Division of Circuit Court has jurisdiction over criminal cases involving juveniles.\*

For a general discussion of pretrial proceedings in criminal cases, see Michigan Judicial Institute, *Felony Arraignments in District Court* (Criminal Benchbook Series, Monograph 4, 1992). For general information about magistrates' duties in traffic cases, see Michigan Judicial Institute, *New Magistrate Traffic Adjudication Manual* (1966).

## 6.3 Criminal Penalties for Felony Traffic Offenses

The Michigan Vehicle and Penal Codes contain general penalty provisions that apply in felony cases where criminal sanctions are not otherwise fixed by statute. Under the Michigan Vehicle Code, “[a]ny person who is convicted of a violation of any of the provisions of this act declared to constitute a felony, unless a different penalty is expressly provided herein, shall be punished by imprisonment for not less than 1 year nor more than 5 years, or by a fine of not less than \$500.00 nor more than \$5,000.00, or by both such fine and imprisonment.” MCL 257.902; MSA 9.2602.

Under the Michigan Penal Code, if the criminal penalty is not otherwise fixed by statute, a person convicted of a crime declared by any act of the state of Michigan to be a felony “shall be punished by imprisonment in the state prison for not more than 4 years or by a fine of not more than 2,000 dollars, or by both such fine and imprisonment.” MCL 750.503; MSA 28.771.

A conflict between the penal provisions of the Vehicle Code and the Code of Criminal Procedure must be resolved in favor of the more specific Vehicle Code provisions. See *Wayne County Prosecutor v Wayne Circuit Judge*, 154 Mich App 216, 221–22 (1986), discussed at Section 2.9(A).

## 6.4 Licensing Sanctions for Felony Traffic Offenses

Prior to October 1, 1999, courts and the Secretary of State had statutory authority to order licensing sanctions for certain felony offenses. For arrests after October 1, 1999, the authority to impose licensing sanctions has been consolidated in the Secretary of State in all cases, except for:

- Drug suspensions under the Public Health Code, MCL 333.7408a; MSA 14.15(7408a); or,
- No proof of insurance convictions. MCL 257.328; MSA 9.2028.

This section generally addresses the Secretary of State's authority to impose points, license suspensions, and license revocations in felony cases.\* For information about licensing sanctions imposed for a particular offense, see the discussion of that offense in Chapters 7 - 9. For information about abstract of conviction requirements, see Section 2.12.

**Note:** If the defendant was convicted of an attempt to commit a felony traffic offense, the same licensing sanctions apply as if the defendant had been convicted of the completed offense. Effective October 1, 1999, MCL 257.204b(1); MSA 9.1904(2)(1), provides:

“When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.”

See Section 7.1 for more discussion of attempted traffic offenses.

### A. Points

After a felony conviction is entered on a defendant's driving record, points may be assessed according to the schedule set forth in MCL 257.320a; MSA 9.2020(1). Assessing points is a mandatory function of the Secretary of State, not a function of the court.

Felony convictions for moving violations result in the assessment of six points on the defendant's driving record. Vehicle Code §320a lists the following assessments of points in felony cases:\*

- Six points—Manslaughter, negligent homicide, or a felony resulting from the operation of a motor vehicle, MCL 257.320a(1)(a); MSA 9.2020(1)(1)(a).

\*License suspensions and revocations in drunk driving and DWLS cases under Vehicle Code §625 and §904 are discussed in Section 2.10.

\*This list does not include the drunk driving offenses in Chapter 3 of this volume. See the discussion of each offense for information about the points assessed.

- Six points—Failing to stop and disclose identity at the scene of an accident when required by law, MCL 257.320a(1)(c); MSA 9.2020(1)(1)(c).
- Six points—Operating a motor vehicle in a reckless manner, MCL 257.320a(1)(d); MSA 9.2020(1)(1)(d).
- Six points—Fleeing and eluding, MCL 257.320a(1)(g); MSA 9.2020(1)(1)(g).

If more than one conviction, civil infraction determination, or juvenile disposition results from the same incident, points shall be entered only for the violation that receives the highest number of points. MCL 257.320a(5); MSA 9.2020(1)(5).

## B. License Suspension

Persons convicted of certain felony or two year misdemeanor traffic offenses receive a mandatory license suspension under MCL 257.319; MSA 9.2019. Such a suspension is imposed notwithstanding a court order. MCL 257.319(9); MSA 9.2019(9). The periods of suspension set forth in §319 appear below.

**MCL 257.319(2); MSA 9.2019(2)** requires a one year suspension of the defendant's driver's license for the following felonies:

- Altering or forging documents pertaining to motor vehicles in violation of MCL 257.257; MSA 9.1957.
- Unlawfully driving away an automobile, MCL 750.413; MSA 28.645.
- Felonious driving, MCL 752.191; MSA 28.661.
- Leaving the scene of an accident resulting in death or serious injury in violation of MCL 257.617; MSA 9.2317.
- A "felony in which a motor vehicle was used," 257.319(1)(e); MSA 9.2019(1)(e).\*
- Third- and fourth-degree fleeing and eluding, MCL 257.602a(2) or (3); MSA 9.2302(1)(2) or (3), and MCL 750.479a(2) or (3); MSA 28.747(2) or (3).

**MCL 257.319(3); MSA 9.2019(3)** requires the Secretary of State to suspend the defendant's driver's license for 90 days for malicious destruction of trees, shrubs, plants, or soil with a motor vehicle, MCL 750.382(1)(c) or (d); MSA 28.614(1)(c) or (d).

**MCL 257.319(5)–(6); MSA 9.2019(5)–(6)** require the Secretary of State to suspend the defendant's driver's license as follows for making a false certification, MCL 257.903; MSA 9.2603, or unlawfully using an automobile without intent to steal, MCL 750.414; MSA 28.646:

- For a first offense, 90 days.

\*See Section 6.4(D) for more information about felonies in which a motor vehicle was used.

- If the defendant has one or more prior convictions for the same offense within seven years, one year.

If the Secretary of State receives records of more than one conviction or juvenile disposition of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies. MCL 257.319(10); MSA 9.2019(10).

### C. License Revocation

MCL 257.303(2); MSA 9.2003(2), requires the Secretary of State to revoke the defendant's driver's license in certain circumstances. With regard to felony offenses, the Secretary of State must revoke the defendant's driver's license in the following circumstances:

- Two convictions of "a felony in which a motor vehicle was used" within seven years, MCL 257.303(2)(b); MSA 9.2003(2)(b). See Section 6.4(D) for more information about this type of offense.
- One conviction of negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, or an attempt to commit any of those crimes, MCL 257.303(2)(e); MSA 9.2003(2)(e).
- First- and second-degree fleeing and eluding, MCL 257.602a(4) or (5); MSA 9.2302(1)(4) or (5), and MCL 750.479a(4) or (5); MSA 28.747(4) or (5).

The Secretary of State shall revoke a license in the foregoing cases notwithstanding a court order. MCL 257.303(3); MSA 9.2003(3).

Periods of license revocation imposed under §303(2) expire on the later of the following:

- The expiration of not less than one year after the license was revoked or denied.
- The expiration of not less than five years after the date of a subsequent revocation or denial occurring within seven years after the date of any prior revocation or denial.

MCL 257.303(4); MSA 9.2003(4).

### D. Licensing Sanctions for a "Felony in Which a Motor Vehicle Was Used"

The Vehicle Code mandates specific licensing sanctions for offenses categorized as a "felony in which a motor vehicle was used." Felonies so categorized are not separate offenses that are subject to additional criminal penalties.\* Instead, this characterization is a judicial determination made after conviction as part of the sentence that results in the imposition of the following licensing sanctions:

\*Criminal penalties in these cases are to be imposed according to the penal statute that applies to the felony at issue.

- Suspension of the defendant's driver's license for one year for a first offense. MCL 257.319(2)(e); MSA 9.2019(2)(e).
- Revocation of the defendant's driver's license upon conviction of two "felonies in which a motor vehicle was used" within seven years. MCL 257.303(2)(b); MSA 9.2003(2)(b).

Before these sanctions may be imposed, three procedural requirements must be met:

1. The prosecutor must give the defendant notice on the complaint and information that license suspension may result upon conviction. This notice must state:

"You are charged with the commission of a felony in which a motor vehicle was used. If you are convicted and the judge finds that the conviction is for a felony in which a motor vehicle was used, as defined in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319, your driver's license shall be suspended by the Secretary of State." MCL 257.732(6); MSA 9.2432(6).

2. The court must determine as part of the sentence that the felony was one in which a motor vehicle was used. A felony in which a motor vehicle was used is:

"a felony during the commission of which the person operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

- (a) The vehicle was used as an instrument of the felony.
- (b) The vehicle was used to transport a victim of the felony.
- (c) The vehicle was used to flee the scene of a felony.
- (d) The vehicle was necessary for the commission of the felony." MCL 257.732(5); MSA 9.2432(5). (MCL 257.319(2)(e); MSA 9.2019(2)(e) contains a substantially similar definition.)

3. Upon conviction, the court must send an abstract to the Secretary of State. MCL 257.732(8); MSA 9.2432(8).

Despite the broad definition of a "felony in which a motor vehicle was used," some felonies involving motor vehicles are exempt from the notice

requirements imposed by Vehicle Code §732(6). These exempt felonies are listed in §732(4) and §319; many of them are also subject to different licensing sanctions than those generally imposed on “felonies in which a motor vehicle was used.” These exempt felonies are as follows:

- Fraudulently altering or forging documents pertinent to a motor vehicle, MCL 257.257; MSA 9.1957.
- Unlawful driving away an automobile, MCL 750.413; MSA 28.645, or an attempt to commit this offense.
- Use of a motor vehicle without authority but without intent to steal, MCL 750.414; MSA 28.646, or an attempt to commit this offense.
- Failure to obey a police or conservation officer’s direction to stop, MCL 750.479a(2) or (3); MSA 28.747(1)(2) or (3), and MCL 257.602a(2) or (3); MSA 9.2302(1)(2) or (3), or an attempt to commit this offense.
- Felonious driving, MCL 752.191; MSA 28.661, or an attempt to commit this offense.
- Negligent homicide with a motor vehicle, MCL 750.324; MSA 28.556, or an attempt to commit this offense.
- Manslaughter with a motor vehicle, MCL 750.321; MSA 28.553, or an attempt to commit this offense.
- Murder with a motor vehicle, MCL 750.316; MSA 28.548 (first-degree murder), and MCL 750.317; MSA 28.549 (second-degree murder), or an attempt to commit these offenses.
- Minor in possession, MCL 436.1703; MSA --, or an attempt to commit this offense.
- Perjury or false certification to Secretary of State, MCL 257.903; MSA 9.2603.
- Malicious destruction of trees, grass, shrubs, etc., with a motor vehicle, MCL 750.382(1)(c) or (d); MSA 28.614(1)(c) or (d).
- Failing to stop and disclose identity at the scene of an accident resulting in death or serious injury, MCL 257.617 and 257.617a; MSA 9.2317 and 9.2317(1).
- Drunk driving offenses under MCL 257.625; MSA 9.2325.
- A controlled substance violation under MCL 333.7401–333.7461, or 333.17766a; MSA 14.15(7401)–14.15(7461), or 14.15(17766a), for which the defendant receives a minimum prison sentence of less than one year.

